



## Filing Receipt

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**DOCKET NO. 51841**

**REVIEW OF 16 TAC § 25.53                    §        PUBLIC UTILITY COMMISSION**  
**RELATING TO ELECTRIC SERVICE       §**  
**EMERGENCY OPERATION PLANS       §                                    OF TEXAS**

**EL PASO ELECTRIC COMPANY’S INITIAL COMMENTS ON THE PROPOSAL FOR  
PUBLICATION OF REPEAL OF 16 TAC § 25.53 AND REPLACEMENT WITH  
PROPOSED NEW 16 TAC § 25.53**

El Paso Electric Company (“EPE”) appreciates the opportunity to submit these initial comments (“Initial Comments”) on the Public Utility Commission of Texas’s (“Commission”) proposed repeal and replacement of 16 Texas Administrative Code (“TAC”) § 25.53 relating to Electric Service Emergency Operations Plans (individually referred to as an “EOP”). The new 16 TAC § 25.53 will require utilities and other market participants to file an unredacted EOP in its entirety with the Commission and outlines the required contents of an EOP. The new rule will also require an entity to participate in drills to test its plan and provide status updates at the request of Commission staff when the State Operations Center is activated.

**I.        Comments**

The Commission’s proposal directed comments to be organized in a manner consistent with the organization of the proposed rules. Below, EPE offers comments in response to specific provisions of the proposed new 16 TAC § 25.53. In general, however, while EPE appreciates the Commission’s desire to undertake actions with respect to emergency preparedness, it is also important to balance the potential benefits to be gained by the newly proposed 16 TAC § 25.53 with the potentially burdensome requirements of the new rule. EPE also notes that AEP Texas Inc., Electric Transmission Texas, LLC, and Southwestern Electric Power Company submitted

comments regarding the newly proposed 16 TAC § 25.53; EPE generally supports those comments, but recommends 120 days for compliance as discussed more fully below.

**A. Definitions - 16 TAC § 25.53(b)**

The proposed 16 TAC § 25.53(b)(3) defines “emergency,” but it is overly broad. Because the existence of an emergency will require activation of an EOP, the definition should be limited to apply only after an “emergency” declaration from the local, state, or federal government; the Electric Reliability Council of Texas (“ERCOT”); or another Reliability Coordinator.

**B. Filing Requirements - 16 TAC § 25.53(c).**

The proposed 16 TAC § 25.53(c)(1)(A) would require the filing of both an unredacted EOP in its entirety and a redacted, public version of the EOP. This is in contrast to the existing 16 TAC § 25.53(b), which allows the utility to submit either the entire EOP or a comprehensive summary of the EOP. The Commission’s proposal does not articulate what additional benefit is gained by not continuing to allow a comprehensive summary in lieu of the submission of the EOP (in either form) or, conversely, how allowing a comprehensive summary in lieu of the submission of the EOP is detrimental. Proposed 16 TAC § 25.53(c)(1) also would require the filing of the EOP by April 1, 2022. For reasons discussed in the next section, if the Commission requires the filing of individual EOPs (as opposed to a comprehensive summary), then additional time will be necessary to comply. EPE recommends at least 120 days be given for compliance upon the Commission issuing an order.

Moreover, although proposed 16 TAC § 25.53(c)(1)(A) would allow an entity to submit a redacted public version of the EOP, it is EPE’s understanding that the unredacted version would still be subject to a request made through the Texas Public Information Act (“TPIA”). If public

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disclosure of various aspects of the EOP were to occur, it could be contrary to federal protections  
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for Critical Energy/Electric Infrastructure Information (“CEII”) and create a safety and reliability risk.

It is important to consider that many of the emergency plans that EPE (and other similarly-situated utilities) have in place are needed to comply with various North American Electric Reliability Corporation (“NERC”) standards. The Federal Energy Regulatory Commission (“FERC”) certified NERC as the Electric Reliability Organization for the United States, and FERC oversees NERC in the United States. The FERC exempts CEII from mandatory disclosure.<sup>1</sup> To the extent unredacted EOPs are subject to public records requests, the proposed 16 TAC § 25.53(c)(1)(A) could conflict with federal law. The danger in making CEII public is that it could be used by those planning an attack on critical infrastructure. Additionally, the Commission’s proposal appears to require each filing entity to submit EOPs in the same format and in a single EOP. EPE currently has numerous emergency-based procedures, but they are dispersed throughout the company depending on which business unit(s) or personnel are responsible for implementation of the procedures. Combining the procedures into one comprehensive document will be very time consuming. As noted earlier, EPE currently provides a comprehensive summary of its procedures. It is unclear what the benefit will be of requiring these procedures to be combined into one EOP - it will not aid EPE in undertaking the procedures and EPE can readily provide such procedures to the Commission upon request.

Newly proposed 16 TAC § 25.53(c)(1)(C) would require that the annual EOP include, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the

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<sup>1</sup> See 18 C.F.R. § 388.113.

EOP as a result. EPE respectfully suggests that requiring an after-action report after each incident may be too broad. Instead, EPE suggests requiring the EOP to include after-action reports only after significant incidents, for example after “emergencies” as defined in the new rule or after a “significant interruption” as defined in 16 TAC § 25.52.

**C. Information to be included in the EOP, required annexes, and drills - 16 TAC §§ 25.53(d), (e), and (f).**

Based on its review, EPE already has plans in place that cover the majority of the information and annexes required in the proposed new rule. However, as noted earlier, those plans are not consolidated into one document. In addition, some plans might need to be further developed. For example, EPE’s System Operations’ Emergency Procedures address the actions its power generation business area takes to prepare for cold weather, however, the steps are described in general terms. Therefore, EPE likely would need to create such an annex. EPE has identified other similar examples, which will require time and work to revise to meet the requirements of the proposed 16 TAC §§ 25.53(d) and (e). For these reasons, EPE respectfully recommends the Commission not require a consolidated EOP.

Regarding the drills required under proposed 16 TAC § 25.53(f), similar to the required information and annexes, EPE already undertakes certain drills (for example, those hosted by EPE’s Reliability Coordinator and under its Incident Management Plan). However, EPE may need to expand the number and types of drills to fully comply with proposed 16 TAC § 25.53(f). This will take time to develop and implement and, accordingly, necessitates a longer time frame for compliance with any new rule.

## **II. Conclusion and Prayer**

EPE appreciates the opportunity to provide comments regarding the Commission's proposed repeal and replacement of 16 TAC § 25.53 and the Commission's consideration of the comments set forth herein.

Respectfully Submitted,



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**EXECUTIVE SUMMARY OF EL PASO ELECTRIC COMPANY’S INITIAL  
COMMENTS**

El Paso Electric Company (“EPE”) appreciates the effort the Commission has undertaken with the newly proposed 16 Texas Administrative Code (“TAC”) § 25.53 and appreciates the desire to mitigate impacts from emergencies, such as Winter Storm Uri. EPE shares that same goal and to that end already meets numerous North American Electric Reliability Corporation (“NERC”) standards, which is a primary driver of the existing Emergency Operation Plans (“EOPs”) that EPE has in place. However, the Commission should consider and further articulate: (1) what additional benefits will result from the newly proposed 16 TAC § 25.53 in comparison to the process under the existing 16 TAC § 25.53, and (2) the potentially burdensome impact for entities required to comply. The following bullets summarize EPE’s Initial Comments on the new proposed 16 TAC § 25.53:

**A. Definitions - 16 TAC § 25.53(b)**

- The proposed definition of “emergency” is overly broad.

**B. Filing Requirements - 16 TAC § 25.53(c).**

- The Commission should consider why the current authorization for a comprehensive summary of an entity’s EOP is not sufficient. If the Commission requires entities to submit EOPs in lieu of comprehensive summaries, then the most burdensome consequences will be compiling all of the existing EOPs, along with potentially any new annexes and drills required to be created, into one comprehensive EOP to be submitted by April 1, 2022.
- The Commission should allow entities to submit multiple EOPs to demonstrate compliance with the required information and annexes. The Commission should also

allow a reasonable amount of time for compliance given the additional work that will be required should the proposed 16 TAC § 25.53 be implemented. Instead of compliance by April 1, 2022, EPE recommends at least 120 days be given for compliance upon the issuance of a final order.

- The filing of an unredacted EOP could potentially lead to a safety and reliability risk if Critical Energy/Electric Infrastructure Information (“CEII”) is publicly released.
- EPE suggests requiring the EOP to include after-action reports only after significant incidents, for example after “emergencies” as defined in the new rule or after a “significant interruption” as defined in 16 TAC § 25.52.

**C. Information to be included in the EOP, required annexes, and drills - 16 TAC §§ 25.53(d), (e), and (f).**

- EPE recommends the Commission not require a consolidated EOP. EPE recommends the Commission continue to allow the filing of comprehensive summaries.
- EPE recommends the Commission provide necessary time to develop any new drills required under proposed 16 TAC § 25.53(f).